



April 13, 2020

Jacob Appelsmith, Director
California Department of Alcoholic Beverage Control
3927 Lennane Drive, Suite 100
Sacramento, CA 95834

Re: Alcohol Justice response to:
a) Notice of Regulatory Relief;
b) Second Notice of Regulatory Relief;
c) Guidance by License Type

Dear Director Appelsmith,

We are writing in response to the regulatory relief for California alcohol licensees in response to the COVID-19 outbreak. We understand that this is an extraordinary time, and that the relief is intended to protect residents' livelihoods and the tens of thousands of reputable alcohol licensees. Nonetheless, as an alcohol industry watchdog, we feel obligated to call attention to red flags and missed opportunities in the emergency response.

The Department of Alcoholic Beverage Control (ABC) has the mission not just to monitor and enforce against liquor law violators, but to use its powers to promote temperance in the classic definition: *not drinking to excess*. As you are well aware, alcohol use, sales, and harm are subject to idiosyncratic factors, including community norms and inordinate control of the market by large corporations, and the emergency actions may have consequences that echo long after the crisis is over. We fear the shift the entire state is experiencing towards at-home consumption, with shifts to at-home harms from heavy drinking or binge drinking, as defined by CDC, such as domestic violence, and dare we say, depression, murder and suicide. Therefore, ***at-home consumption should not be encouraged***. Evidence that alcohol use compromises the immune system is compelling, and should be a public health prevention message during the pandemic crises.

We have concerns that regulatory relief threatens to move ABC away from a temperance mission. Those concerns, both general and particular, are detailed below.

1. Although we understand the desire for quick action in the face of rapidly evolving circumstances, the consideration process for regulatory relief was not made transparent. To the best of our knowledge, no community or public health groups were involved in the decision-making. It is not even clear to what if any degree the California Department of Public Health was involved. ***There is also no clear pathway for public comment***. We do not know of any public health advocacy agency that was consulted prior to your regulatory relief.
2. Many areas in California are overconcentrated with alcohol licenses. Research demonstrated time and time again that overconcentration leads to an increase in alcohol-related harms. While we do not advocate policies that deliberately force licensees to close permanently, it is clear that some may need to regardless of regulatory relief. While there will be pressure to return things to "normal" once the crisis has passed, ***ABC should be actively preparing to permanently retire licenses in areas that are already overconcentrated***. Relatedly,

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applicants in overconcentrated areas often cite the need for revenue generated by alcohol sales to simply make overhead as a reason to violate license caps. Resetting the number of licenses to the maximums dictated by overconcentration formulae would, in the medium term, alleviate some of the competitive pressure restaurants and stores feel to orient their business models around alcohol sales.

3. As off-sale alcohol consumption is increasing and on-sale is nearly non-existent, a **temporary emergency sales surtax or excise surtax** would both reduce consumption and fund medical services. Although that money would and should be used to fight coronavirus, any increase in alcohol use will also have a social health and safety cost, which this tax would offset in the longer term.
4. Retail-to-retail sales are a new type of alcohol transaction in California. They threaten to empower large alcohol retailers to prey on independent ones. As small on-sale and off-sale outlets begin to feel economic pressure to liquidate their stock, they will presumably sell—probably untaxed—at below-market rates to the outlets that remain in business. These outlets are likely to be large retailers, which in turn can resell this alcohol at a major discount. This both encourages consumption by undercutting price controls, and concentrates alcohol income in the hands of the businesses least threatened by shelter-in-place rules. This is further exacerbated by the relief on delivery regulations, which may advantage large retailers who are able to contract deliveries in-house. **We ask that you immediately rescind retail-to-retail sales, or at the very least request that the buyer pay sales tax.**
5. We are skeptical that the “packaged to-go” cocktails will be a significant source of income (or harm) in the short-term and believe it to be window-dressing. However, there is no assurance that cocktail preparation and container handling is sanitary. This relief policy is a major deviation from standard ABC regulations and we are concerned that there will be pressure for it to remain after shelter-in-place is lifted. **We strongly urge ABC to proactively proclaim that these to-go privileges will be rescinded for all licensees after the crisis, as the ABC statutes clearly state.**
6. While the “pass-out window” exemptions make sense from the perspective of limiting person-to-person contact, there is no obligation on sellers to ensure the alcohol is stored properly in the car. Moreover, one of the most prevalent sites of drive-through consumer sales are pharmacies. **Pharmacies should be expressly excluded from the relief.** Allowing mass purchasing of liquor through pharmacy windows enables harm while setting norms that equate alcohol with medication and health, and almost every pharmacy that uses drive-through windows is part of a major national corporation that should be last in line for economic relief.
7. Despite the regulatory relaxation on delivery, takeout windows, and to-go, ABC should continue to engage in sting operations and adapt them to the crisis-time retail landscape. Less contact with consumers, the urge to social distance, and the pressures of economic distress could make it tempting to ignore rules against minimum purchase age and serving to intoxicated persons. Licensees should not be allowed to forget that alcohol sales are a privilege conditional on looking out for the health of the community. **Underage drinkers reporting to the emergency department should, if at all possible, still be reported to TRACE** and trace follow-ups performed during or immediately after emergency conditions, although we recognize this may be a difficult ask of medical staff right now.

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8. Generally speaking, ***it is not clear if ABC has provided sanitation guidance***—or, better yet, requirements—to any licensees. This is imperative, especially with the circumstances of sales changing. More particularly, it is not clear that the relief allowing bars with kitchens begin operating as take-out restaurants have any requirement that the staff of those kitchens have food handling certifications. An emergency department admission for acute food poisoning takes a bed away from someone who needs intensive care for other conditions. Of course, improper food handling also risks spreading the coronavirus.
9. We would like to call ABC attention to **social media advertisements from Budweiser promoting Drizly**, a “fourth-party” (non-manufacturer, distributor, or retailer) delivery service for alcohol. There seem to be loopholes that put Drizly outside the three-tier system, which, again, threaten to create new norms that violate the spirit of tied-house laws and allow mega-corporations like AB InBev to consolidate their market.
10. The relief allowing for alcohol companies to divert a proportion of sales to COVID-related charities plainly allows for bad actors. This policy enables cynical alcohol companies to profiteer off altruism and community sentiment if they are so inclined. Even the vague condition that the charitable effort not encourage further drinking is clearly self-negating—the fact that the consumer’s purchase ostensibly supports community health is an inducement in itself to consume more. As Alcohol Justice has shown in our reports on pinkwashing, we invariably find that alcohol companies spend less on donating to charities than they spend on advertising that they donate to charities. One might call this Covid-washing of products. ***We ask that ABC discourage advertising of donations to charities by licensees and strictly and simply have them donate, and not concurrently advertise donations.***
11. Alcohol manufacturers able to contribute to efforts to create hand sanitizer and other sterilizing alcohols should be applauded. However, already AB InBev and others are close to the line as they have started distributing **branded** hand sanitizer. Again, ***branding hand sanitizer is cynical advertising and should be discouraged.*** Additionally, hand sanitizer is a product of alcohol distillation. We propose that once the crisis has passed, ***it is worth investigating whether AB InBev has substantial operating distilleries in its California “brewing” plants and whether those are compliant with the nature of its products.***

Again, we recognize the public pressure and economic compassion informing much of the regulation relief. However, as with any large-scale change to the existing alcohol sales structures, we are immediately on watch for threats to the public’s health and safety. We hope ABC is likewise on watch, and looking forward to ending regulatory relief completely. We are happy to immediately discuss the challenges posed by the current circumstances and look forward to a timely response.

Wishing you and your staff good health,



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